

REMARKS

In the May 26 Office Action, the Examiner rejected claims 1-13, 23-27 and 30-32 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-22 of U.S. Patent No. 6,522,295 (issued Feb. 18, 2003; hereinafter referred to as the “‘295 patent”) in view of the reference entitled “Bistatic Laptop Radar; An Affordable, Silent Radar Alternative” (presented at the IEEE 1996 National Radar Conference, Ann Arbor, Michigan, May 13-16, 1996; hereinafter referred to as “Ogrodnik”) and U.S. Patent No. 5,252,980 (issued Oct. 12 1993; hereinafter referred to as “Gray”). The Examiner also rejected claims 14-22, 28 and 29 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-22 of the ‘295 patent in view of Ogrodnik, Gray and U.S. Patent No. 4,063,073 (issued Dec. 13, 1977; hereinafter referred to as “Strayer”). Applicant respectfully traverses the Examiner’s rejections.

Independent Claims 1 and 31 are directed to systems for enhancing object state awareness to track a plurality of approaching airborne objects. Independent Claim 6 is directed to a passive coherent location system for monitoring a predetermined location within airspace. Independent Claims 14, 22, 28 and 29 are directed to methods and systems for determining an updated state estimate for an object. Independent Claims 23 are 30 are directed to a method and a system for tracking an object using a civil aviation passive coherent location system. Among other limitations, each of these independent Claims include front-end and back-end processing subsystems that are remotely located relative to one another. As the Examiner points out, both Ogrodnik and Gray do not disclose remotely located front-end and back-end processing subsystems.

Some of the claims of the ‘295 patent (e.g., independent Claims 1 and 6 and the claims depending therefrom) include both front-end and back-end processing subsystems. However, a review of the claims of the ‘295 patent indicates that none of Claims 1-22 of the ‘295 patent include the limitation that the front-end and back-end processing subsystems be remotely located from one another. Furthermore, Applicant respectfully submits that the Examiner has not cited any reference that can be properly relied upon that discloses or suggests remotely located front-end and back-end processing subsystems.

In this regard, in considering the question of whether a claim in a pending application defines merely an obvious variation of an invention disclosed and claimed in a patent cited as the

basis for a judicially created obviousness-type double patenting rejection, "the patent disclosure may not be used as prior art." *In re Vogel*, 57 C.C.P.A. 920, 924, 422 F.2d 438, 441 (CCPA 1970). As the Federal Circuit Court has stated "[o]ur precedent makes clear that the disclosure of a patent cited in support of a double patenting rejection cannot be used as though it were prior art, even where the disclosure is found in the claims." *General Foods Corp. v. Studiengesellschaft Kohle mbH*, 972 F.2d 1272, 1281 (Fed. Cir. 1992). See also *In re Kaplan*, 789 F.2d 1574, 1579 (Fed. Cir. 1986) (discussing *Vogel* decision). Thus, regardless of whether the '295 discloses remotely located front-end and back-end processing subsystems, the '295 patent cannot be relied upon as a prior art reference in combination with Ogrodnik and Gray to assert that the claims of the present application are obvious in view of any claims of the '295 patent.

Additionally, all elements of a claim must be either taught or reasonably suggested by the prior art to establish a *prima facie* case of obviousness. *M.P.E.P.* § 2142. Since the '295 patent cannot be used as a prior art reference and since neither Ogrodnik nor Gray disclose remotely located front-end and back-end processing subsystems, the Examiner has failed to establish a *prima facie* case of obviousness. Therefore, each of independent Claims 1, 6, 14, 22, 23, 28, 29, 30 and 31, and all claims depending directly or indirectly therefrom are allowable.

Based upon the foregoing, Applicant believes that all pending claims are in condition for allowance and such disposition is respectfully requested. In the event that a telephone conversation would further prosecution and/or expedite allowance, the Examiner is invited to contact the undersigned.

Respectfully submitted,

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